

JENNER & BLOCK LLP

Reid J. Schar (*pro hac vice*)

RSchar@jenner.com

353 N. Clark Street

Chicago, IL 60654-3456

Telephone: +1 312 222 9350

Facsimile: +1 312 527 0484

CLARENCE DYER & COHEN LLP

Kate Dyer (Bar No. 171891)

kdyer@clarencedyer.com

899 Ellis Street

San Francisco, CA 94109-7807

Telephone: +1 415 749 1800

Facsimile: +1 415 749 1694

CRAVATH, SWAINE & MOORE LLP

Kevin J. Orsini (*pro hac vice*)

korsini@cravath.com

825 Eighth Avenue

New York, NY 10019

Telephone: +1 212 474 1000

Facsimile: +1 212 474 3700

Attorneys for Defendant PACIFIC GAS AND ELECTRIC  
COMPANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case No. 14-CR-00175-WHA

**PG&E'S FURTHER RESPONSE IN  
ADVANCE OF MARCH 23, 2021  
HEARING**

Judge: Hon. William Alsup

Defendant Pacific Gas and Electric Company (“PG&E”) respectfully submits this further response concerning the various orders scheduled for discussion at the hearing dated March 23, 2021. In Section I of this submission, PG&E provides a further response to the Court’s February 4, 2021 order concerning Proposed Conditions 11 and 12 (Dkt. 1294) as a result of the CPUC’s filing dated March 19, 2021 (Dkt. 1349). In Section II of this submission, PG&E provides supplemental information to the Court concerning vegetation management work on the Girvan 1101 12 kV Distribution Circuit (“Girvan Circuit”).

#### **I. Further Response Concerning Proposed Conditions 11 and 12**

In the Court’s December 29, 2020 order to show cause, the Court set forth Proposed Conditions 11 and 12 under which PG&E would have been required, when deciding which distribution lines in Tier 2 or Tier 3 HFTDs to de-energize during a PSPS event, to take into account outstanding vegetation management work prescribed pursuant to Public Resources Code section 4293, General Order 95, FERC FAC-003-4 or PG&E’s Wildfire Mitigation Plan. (Dkt. 1277 at 16.) In PG&E’s January 20, 2021 submission, PG&E proposed an approach under which it would take into account, when deciding which distribution lines in Tier 2 or Tier 3 HFTDs to de-energize during a PSPS event, the existence of outstanding vegetation management work tagged Priority 1 or Priority 2. (Dkt. 1279 at 4.) In the Government’s January 25, 2021 filing, the Government proposed, for clarity’s sake, language modifying PG&E’s supplemented Proposed Conditions. (Dkt. 1282 at 2.) PG&E agreed with the Government’s suggestion (Dkt. 1285 at 2), and the CPUC stated that it did not object (Dkt. 1288 at 4). PG&E continues to believe that the portions of Proposed Conditions 11 and 12 that relate to outstanding Priority 1 and Priority 2 vegetation management work can and should be implemented, as all parties to these proceedings agree to that language and PG&E’s regulator has confirmed it does not object.

Following the February 3, 2021 hearing on that proposed language, the Court proposed supplemental language for Conditions 11 and 12 that would also require PG&E to consider the approximate number of trees tall enough to fall into the line when making de-energization decisions. (Dkt. 1294 at 2.) On February 19, PG&E explained that it had no

1 objection to this additional proposed language, and that the “precise mechanics of how to . . .  
 2 fulfill the letter and spirit of the Court’s condition is being worked on by PG&E’s operations  
 3 teams”. (Dkt. 1310 at 2.) PG&E also explained in that response that it would implement the  
 4 Proposed Conditions “by using expert analysis to set fire-risk thresholds to determine when  
 5 conditions warrant de-energization. Those thresholds will seek to substantially reduce the risk of  
 6 catastrophic wildfires, while recognizing that shutting off electricity creates its own safety risks  
 7 and severely disrupts affected communities.” (*Id.*)

8           On February 19, the CPUC expressed the opinion that Proposed Conditions 11  
 9 and 12, as modified by the Court in its February 4 order, “may unduly broaden PG&E’s PSPS  
 10 events beyond the scope that has been vetted by safety experts and parties in ongoing CPUC  
 11 proceedings”. (Dkt. 1314 at 4.)<sup>1</sup> After that filing by PG&E’s regulator, and as part of PG&E’s  
 12 process of analyzing and setting fire-risk thresholds to determine when conditions warrant  
 13 de-energization as part of Proposed Conditions 11 and 12, PG&E shared with the CPUC the fire-  
 14 risk thresholds that it has been considering to address the issue of tall trees in proximity to  
 15 PG&E’s lines. As PG&E explained to the CPUC, it developed those thresholds specifically to  
 16 ensure that—if they had been in place in September 2020—PG&E would have de-energized the  
 17 Girvan Circuit in the area of interest on the day the Zogg Fire ignited. PG&E also explained to  
 18 the CPUC, as it has previously stated to the Court, that these new thresholds, if adopted, will lead  
 19 to significant additional de-energizations.

20           On March 19, the CPUC expressed to the Court its opposition to PG&E’s  
 21 implementation of Proposed Conditions 11 and 12. (Dkt. 1349.) The CPUC stated that “these  
 22 kinds of operationalizing decisions that impact PG&E’s use of PSPS should be subject to a  
 23 thorough vetting by the CPUC’s Safety and Enforcement Division and Wildfire Safety Division,  
 24  
 25

26           <sup>1</sup> On that same day, the United States noted that PG&E had previously told the Court on  
 27 February 12 that PG&E was analyzing the Proposed Conditions with the goal of accepting and  
 28 implementing them, and the United States stated that it had no specific objections or proposed  
 modifications. (Dkt. 1309 at 1-2; *see* Dkt. 1300 at 4.)

1 other experts, local residents and their representatives, tribal governments, and public service and  
 2 first responder agencies”. (*Id.* at 7.)

3 PG&E continues to believe that implementing changes to its PSPS protocols to  
 4 account for the density of trees tall enough to fall into a line (*i.e.*, potential strike trees), as  
 5 contemplated by Proposed Conditions 11 and 12, is a reasonable approach that will further  
 6 reduce wildfire risk. At the same time, PG&E recognizes that the CPUC and Cal OES are  
 7 concerned that there are complex considerations involved that require the input of the state  
 8 regulatory process given the significant customer impacts that would result from the changes  
 9 contemplated by PG&E in response to the Court’s proposal to account for strike-tree density.  
 10 (Dkts. 1311, 1349.) Because the state regulator that oversees the administration of PSPS events  
 11 by California utilities has objected to PG&E complying with the Proposed Conditions, PG&E  
 12 respectfully submits that the strike-tree density requirement must be removed from the Proposed  
 13 Conditions.<sup>2</sup>

14 However, PG&E stresses to the Court that it continues to agree with the Court  
 15 that accounting for strike-tree density in PSPS decision-making is reasonable, appropriate and  
 16 would further reduce the risk of a catastrophic wildfire this year. Accordingly, PG&E commits  
 17 to the Court to pursue the CPUC’s approval to incorporate strike-tree exposure in scoping  
 18 distribution lines for PSPS events. PG&E will consult with the CPUC on an appropriate  
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20 <sup>2</sup> The Ninth Circuit has explained that “where a state has in place a comprehensive  
 21 procedure for resolution of the condition probation imposes, it makes good sense to defer to that  
 22 established procedure.” *United States v. Lakatos*, 241 F.3d 690, 695 (9th Cir. 2001) (citation  
 23 omitted); *see United States v. Snyder*, 852 F.2d 471, 474 (9th Cir. 1988) (“[T]he federal  
 24 government has no constitutional authority to interfere with a state’s exercise of its police power  
 25 except to the extent the state’s action intrudes on any of the spheres in which the federal  
 26 government itself enjoys the power to regulate.”); *Sable Commc’ns of Cal. Inc. v. Pac. Tel. &*  
 27 *Tel. Co.*, 890 F.2d 184, 189 n.9 (9th Cir. 1989) (“California’s police power over public utilities  
 28 has been vested in [the CPUC].”); *see also United States v. Sterber*, 846 F.2d 842, 844 (2d Cir.  
 1988) (“We question whether a federal district judge, unguided by Congress except in the most  
 general terms, can require a defendant to give up a state-granted professional license, particularly  
 where the state provides a comprehensive regulatory system to handle the professional  
 misconduct of those it licenses.”); *United States v. Abushaar*, 761 F.2d 954, 960 (3d Cir. 1985)  
 (“A condition of probation may not circumvent another statutory scheme.”). (*See also, e.g.*,  
 Dkt. 1195 at 3-6; Dkt. 1187-1 at 12-17; Dkt. 976 at 13-50.)

1 expedited procedural vehicle and proposes that it keep the Court apprised of how that regulatory  
2 process proceeds.

## 3 **II. Supplemental Submission Concerning Vegetation Management Work on Girvan 1101**

4 As part of PG&E's responses to questions posed by the Court concerning the  
5 Zogg Fire, PG&E has provided the Court with information regarding the routine vegetation  
6 patrols, CEMA patrols and post-Carr Fire response efforts that covered the area of interest  
7 between September 2015 and September 2020. As the Court is aware, the Girvan Circuit is  
8 approximately 117 miles long, and the area of interest comprises a small portion of the Girvan  
9 Circuit. In connection with PG&E's ongoing investigation, we have discovered records of other  
10 vegetation management work that was conducted during that time period on the Girvan Circuit,  
11 but not in the area of interest, as set forth below.

12 Based on these records, PG&E believes that certain discrete portions of the  
13 Girvan Circuit outside the area of interest were subject to six vegetation management patrols as  
14 part of a PG&E public safety and reliability program that targeted line segments that had a  
15 history of vegetation-related interruptions for additional vegetation management work. These  
16 records show that one patrol, conducted in May 2016, covered a portion of line along Zogg Mine  
17 Road, outside the area of interest. The other five patrols covered areas of the Girvan Circuit  
18 other than Zogg Mine Road. PG&E is producing inspection records and work requests  
19 associated with the May 2016 patrol along a part of Zogg Mine Road as Exhibit A and certain  
20 guidance documents regarding the public safety and reliability program as Exhibit B.

21 PG&E also has identified records of other vegetation management work on the  
22 Girvan Circuit between September 2015 and September 2020 outside the area of interest. While  
23 PG&E has not investigated the specific circumstances surrounding this vegetation management  
24 work outside the area of interest, general reasons why such work may have occurred include  
25 one-off tree work flagged by a customer or another third party, or as part of other initiatives such  
26 as a fuel reduction program. PG&E is producing records of the subset of this work that it has  
27 identified as occurring along Zogg Mine Road (but outside the area of interest) as Exhibit C.

1 Dated: March 22, 2021

Respectfully Submitted,

2 JENNER & BLOCK LLP

3  
4 By: /s/ Reid J. Schar  
Reid J. Schar (*pro hac vice*)

5 CRAVATH, SWAINE & MOORE LLP

6  
7 By: /s/ Kevin J. Orsini  
8 Kevin J. Orsini (*pro hac vice*)

9 CLARENCE DYER & COHEN LLP

10  
11 By: /s/ Kate Dyer  
12 Kate Dyer (Bar No. 171891)

13 Attorneys for Defendant PACIFIC  
14 GAS AND ELECTRIC COMPANY